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Environmental LAW

New York State DEC revises SEQR EAF forms

The New York State Environmental Quality Review Act (SEQR) was adopted in 1976 and requires that state and local agencies evaluate potential environmental impacts of projects prior to granting approval. Since enactment, it has served as the principal environmental planning tool for New York agencies and municipalities prior to decisions to fund, undertake or approve projects across the state.

This article addresses some fundamental changes that have been made to the short and long Environmental Assessment Forms (EAF). The Department of Environmental Conservation (DEC) issued proposed regulatory changes consisting of revised draft forms for public comment in 2011. The full EAF (or long form) used for large projects has not been significantly revised since 1978. The short EAF used for smaller projects was last subject to substantial revisions in 1987.

In January 2012, DEC adopted revised model EAF forms to be published as part of the SEQR regulations at 6 NYCRR Part 617.20, Appendices A and B. The revised forms will include consideration of emerging environmental issues such as climate change, energy conservation, environmental justice, smart growth and pollution prevention.

The DEC's changes also seek to incorporate refinements in the process gained from experience over the years. Although the effective date of the new EAF forms was initially slated to be Oct. 1, 2012, it has now been re-scheduled for Oct. 7, 2013. The DEC is working on developing detailed workbooks to correspond with the new forms in an effort to aid project applicants and agencies in preparing and reviewing the SEQR documents.

As an overview, when a project applicant submits a land-use application for a new project it is generally accompanied by an EAF to provide information to the agency regarding the proposed action, site location and environmental resources.

The agency must first determine whether the proposed action is subject to SEQR, using basic regulatory criteria: 1) is the project included in the list of Type 1 actions (SEQR review required), unlisted, or listed as a Type 2 action (SEQR exempt); 2) is there a potential for significant impact on the environment;

and 3) will the planning and design of the project benefit from SEQR review.

In determining the significance of potential environmental impacts from a project, the SEQR regulations require agencies to identify and assess relevant areas of environmental concern in order to address impacts that are reasonably foreseeable. The reasonableness standard is key, since potential impacts which are not reasonably foreseeable and are speculative do not have to be addressed.

The EAF forms are central to this process. The short form EAF is used for unlisted actions. The long form EAF is used for Type 1 actions, or larger projects that may require preparation of an environmental impact statement.

The EAFs consist of the following: Part 1 — prepared by the project sponsor regarding background information on the proposed action; Part 2 — completed by the lead agency, serves to identify potentially significant adverse environmental impacts; and Part 3 — completed by the lead agency to support the agency's determination of significance.

In the event that the agency determines that there will be no significant impacts on the environment (negative declaration), the agency completes the record for reaching that determination and environmental review of the action is concluded. In the event that a positive declaration is issued by the agency, an environmental impact statement must be prepared to further evaluate potential environmental impacts of a project.

The current version of the short form EAF consists of two pages and has three parts: Part 1 — Project and Sponsor Information; Part 2 — Impact Assessment; and Part 3 — Determination of Significance. The DEC's revised form is four pages with expanded details in each section.

Aside from format changes, there are a number of substantive changes which make the short form EAF significantly more detailed. A few of the key changes to Part 1 include additional questions regarding: public transportation and pedestrian accommodations near the site; whether the action maximizes use

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of energy efficient design or on-site renewable energy technology; whether the proposed action will connect to existing public water and sewer utilities; whether the proposal will create new point source storm water discharges; whether the proposed action includes construction of on-site impoundments such as retention ponds, waste lagoons, etc.; and whether solid or hazardous waste has ever been stored on-site or on adjacent property. DEC has added similar questions to the Part 2 Impact Assessment that is prepared by the lead agency for the project.

Finally, Part 3 of the new short form EAF will require the lead agency to discuss why each potential impact checked as a "yes" in Part 2 will not result in a significant adverse environmental impact.

The new form will require the agency to discuss in detail the impacts, mitigation measures included by the applicant, and an explanation of how the lead agency determined that the impact will not be significant. The revised Part 3 appears to place a much greater burden on the lead agency to discuss and explain each element of Part 2, which forms the basis for its decision.

The DEC's revisions to the long form EAF are substantially more detailed than the changes to the short form. The current version is 21 pages; the DEC's revised EAF is 35 pages and is significantly more detailed than the current version. The DEC has added similar questions to Part 1 regarding climate change, renewable energy and impacts on existing infrastructure.

In addition, DEC has added much more detailed sub-parts on each page regarding existing questions on potential environmental impacts. As an example, the revised form requests information about whether the project will create a new demand for water, anticipated daily use, capacity of the public system, and need for expansion of the system or district. The revised Part 2, which is prepared by the lead agency, is now exceptionally

detailed with new questions and sub-parts to existing questions to conform with the expanded Part 1.

The updates to SEQR forms are certainly appropriate given the length of time since the last revisions. However, in reviewing the revised EAF forms there are a variety of questions and concerns that are raised.

Although the SEQR process has been around for decades, many smaller municipalities and project sponsors still struggle with it under the existing framework. The revised forms require so much detail that it appears to shift the preparation process away from the project sponsor and agency to an engineering function.

While the DEC intends to issue the workbooks to correspond with the new form, it remains uncertain whether these will substantially aid applicants or reviewing agencies. The amount of detail which will be required at the initial stage of project review will be significant, and hence the EAF will be much more expensive and time-consuming to prepare. In addition, new questions regarding climate change, energy conservation and similar issues, while part of public discussion, are rather amorphous and difficult for applicants and municipalities to quantify.

Unfortunately, the nature of many of the new questions may subject the SEQR process to further litigation brought by applicants and project opponents to a proposed action.

Finally, the revised EAF forms appear to raise regulatory hurdles in a state that already faces problems attracting and retaining new business investment. Once the revised SEQR EAF forms become effective on Oct. 7, they will inevitably require substantially more time, review and expense for project sponsors and agencies.

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